

I. OVERVIEW

- Accountability/Accessibility: The legislature created the Freedom of Information Act (FOIA) to hold public entities more accountable for their conduct. It also sought to provide the public greater access to the governing process.
- Primary Purpose: **The people shall be informed so that they may fully participate in the democratic process.**
 - FOIA establishes procedures to ensure every citizen's right of access to government documents.
 - FOIA sets requirements for the disclosure of public records by all "public bodies" in the state. All state agencies, counties and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered.
- Generally, **FOIA covers all records except those specifically cited as exceptions or purely personal communications.** "Public Records" include minutes of open meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules or policies, including guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered.
- Policy and Procedures: Before a public body may recover costs, it must have adopted and published policies and procedures which are easily understood.
- PENALTY FOR VIOLATION: Money damages in the form of attorney fees to a successful plaintiff and penalties for being arbitrary and for intentional and willful violations of the Act.

II. HANDLING A FOIA REQUEST

A. FOIA COORDINATOR AND RECORDS

- A "public body" must have an individual designated to accept and process FOIA requests regarding "public records."
- MCL 15.232 defines a "public body" as:
 - 1) a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government;
 - 2) an agency, board, commission, or council in the legislative branch of the state government;
 - 3) a county, city, township, village, inter-county, inter-city, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof;
 - 4) any other body which is created by state or local authority or which is primarily funded by or through state or local authority; and
 - 5) the judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.
- FOIA Coordinator for Public Body: A public body that is a **city, village, township, county**, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA coordinator.

The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this Act and shall be responsible for approving a denial under section 5(4) and (5).

- Counties: In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA coordinator for that county.
- "Public records" are writings owned, used, retained and/or in the possession of a public body during the performance of official function.

- Additional Definitions:
 - i) **Exempt** Records: Records that **do not** need to be disclosed.
 - ii) **Non-Exempt** Records: Records that **must be** disclosed.
 - iii) **Disclose:** Act of providing public records to the requesting party.
 - iv) **Redact:** To obscure or remove exempt text/information from a public record.
- "Writings" are broadly construed, e.g., handwriting, typewriting, photographs, and "**every other means of recording**". FOIA is intended to cover anything that public body keeps recorded, including audio/video recordings and electronically stored information.
- Purely private communications about private matters are not "public records." Howell Education Association v Howell Board of Education, 287 Mich. App. 228, 789 NW2d 495 (2010).
- **Electronically stored communication:** Broad interpretation of statute and definition of term "writing" encompasses electronically stored communication. This includes **e-mail and text messages.**

B. **THE REQUEST**

- A person has a right to inspect, copy, or receive copies of the public records of a public body.
- Requests must be in writing with enough specificity to enable the FOIA Coordinator to locate the records. However, a public body may provide requested information available in public records without receipt of a written request.
- A person may subscribe to a public entity for future issuances of public records for up to 6 months. This only applies to public records created/issued on a regular basis.

- Prisoner Requests: FOIA **does not** apply to individuals serving a sentence of imprisonment in either state and/or county correctional facilities. Be sure the requestor is serving a sentence and is not awaiting trial.
- Junk or Spam Filters: if a written request is sent by electronic mail and delivered to the public body's spam or junk-mail folder, the request is not received until 1 day after the public body first becomes aware of the written request. The public body shall note in its records both the time a written request is delivered to its spam or junk-mail folder and the time the public body first becomes aware of that request.

C. THE RESPONSE

- A public entity **must** furnish a requesting person a reasonable opportunity for inspection and examination of its public records.
- A public entity **must** furnish reasonable facilities for making memoranda or abstracts from its public records during usual business hours.
- A public entity **does not have to create** a new public record, compilation, summary or list in response to request.
- Non-Exempt Records: The FOIA Coordinator must forward the records **within five (5)** business days of receiving the request. The Coordinator should also prepare an accompanying letter indicating the specific records being produced.
- Time Extension: A public entity is entitled to a **one (1) time ten (10) business day** extension to respond to a FOIA request.
- Exempt Records: The FOIA Coordinator must prepare a written response indicating the request is denied. Also, the Coordinator **must cite a specific statutory basis for the denial**, e.g., specific exemptions in MCLA 15.243, such as attorney-client privilege, and/or any other statutory exemptions. See Section III for a detailed list.
- Mixed Records: The FOIA Coordinator **must** prepare a written response informing person that public body is only disclosing part of requested records. The Coordinator **must** also inform the person of the specific reason for the non-disclosure of the withheld records.
- Non-Existent Records: The written response **must** inform the requesting party that the information sought does not exist.

- Redacted Records: The FOIA Coordinator **must** describe any portions of the record that are separated or deleted from disclosure.
- Failure to Respond: Constitutes a final determination to deny the request.
- The FOIA Coordinator **must** inform the requesting party of their rights of appeal.
- The FOIA Coordinator **must** include **free** written copies of the public body's FOIA procedures and guidelines and the written summary with the written response.

D. REQUIRED PROCEDURES AND GUIDELINES

- Before a public body may recover any costs under FOIA, it must establish and make publicly available procedures and guidelines to implement FOIA.
- The public body must also create a written public summary of the specific procedures and guidelines understood by the general public regarding how to submit written requests. The summary must contain an explanation of how to understand the public body's written responses, deposit requirements, fee calculations and avenues for challenges and appeals. This summary shall be written in a manner so as to be easily understood by the general public.
- If the public body directly or indirectly administers or maintains an official internet presence, it must post and maintain the procedures and guidelines and its summary on its website.
- A public body shall make these procedures and guidelines and the summary available to the general public by providing **free** copies of the guidelines and procedures and summary in the public body's response to a written request or upon request by visitors at the public body's office.
- **A public body shall include the use of a standard form for the detailed itemization of any fee amount permitted under FOIA.** The form will list

and explain the allowable charges for each of the six (6) fee components allowed.

- The failure of a public body to have the guidelines, procedures and summary **does not** relieve a public body of its responsibilities under FOIA. It only prevents them from charging fees or deposits allowed by FOIA.

E. WEBSITE CONSIDERATIONS

- If the public body directly or indirectly maintains an official internet presence, any public record available to the general public on the internet site at the time of a FOIA request is exempt from any charges.
- If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on the website, the FOIA Coordinator **shall** notify the requestor in the written response that all or a portion of the information is available on the website. The written response, to the degree practicable, shall include a specific webpage address where the requested information is available.
- On the detailed itemization form, the public body shall separate records available on the website from those that are not available on the website. If the public body has provided the website address to the requestor and the requestor stipulates that the public record be provide to the requestor in a paper format or other electronic form, the public body shall provide the records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation, not to exceed the actual cost of providing the information in the specified format.

F. REIMBURSEMENT OF COSTS

- The **only** costs that may be recovered under FOIA are in the following six (6) categories described in the Act.

1) A public body may charge for the labor associated with searching for, locating and examining of public records in conjunction with receiving and fulfilling a granted written request.

The calculation of these labor costs cannot be more than the hourly wage of the lowest paid employee capable of retrieving the requested information. All labor costs must be charged in "increments of 15 minutes" with all partial time increments "rounded down."

2) That portion of labor costs, including necessary review, directly associated with the separating and deleting of exempt information from nonexempt information. If the public body does not have a person on staff that is capable of separating and deleting the material, the public body may use contracted labor. A public body may receive some reimbursement for third-party contractors it must hire in order to satisfy a FOIA request. It also appears the amendment includes law firms. This contracted labor must be stated specifically on the detailed itemization form and cannot exceed 6 times the state minimum hourly wage.

The calculation of these labor cost still cannot be more than the hourly wage of the lowest paid employee capable of separating and redacting the requested information, whether or not that person is used to actually perform the service. All labor costs must be charged in "increments of 15 minutes" with all partial time increments "rounded down."

3) The public body may charge for non-paper physical media (i.e., computer discs, computer tapes or other digital or similar media). It must be done in the most reasonably economical cost. This does not apply if the public body lacks the technological capability necessary to provide the records in that format.

4) For paper copies, **the actual incremental cost** of necessary duplication or publication (i.e., cost of toner, paper and equipment lease or purchase), **not including labor**. This **shall not** exceed 10 cents per 8 ½ x 11 inch or 8 ½ x 14

inch sheet of paper. The public body must use double-sided printing if cost saving will occur and is available.

5) The cost of labor associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor. Labor costs under this section may be estimated and charged in increments of the public body's choosing but all partial increments shall be rounded down.

6) The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. The public body may not charge more for expedited shipping or insurance unless specifically stipulated by the requestor. Otherwise, the public body may charge for the least expensive form of postal or postal delivery confirmation when mailing public records.

G. LIMITS ON FEES

- The total fee a public body can charge under the statute cannot be more than the itemized labor costs for the response. **No Profit! FOIA is not a potential revenue source.**
- Fringe Benefits: A public body can recover an employee's fringe benefits. However, the fringe benefit cannot exceed 50% of the employee's actual hourly, labor cost.
- Overtime Wages: A public body **cannot** include overtime wages in the calculation of its labor costs unless the requesting party specifically agrees to the overtime. (Get this agreement in writing or, at least, follow up with written correspondence.)

H. DEPOSITS

- A public body may seek a deposit for time-consuming and expensive FOIA responses. The threshold level for a good-faith deposit is **\$50.00**. The requested deposit may not be more than 1/2 of the estimated fee.
- All deposits requested must include the public body's cost calculation on the required form.
- Unclaimed FOIA Requests: A public body may require a deposit of 100% of the estimated fee for an individual's subsequent FOIA request, if the individual failed to pay the full amount for public records made available to them in a previous FOIA response.

However, in order to do this the following must occur:

- 1) The fee for the prior request cannot be more than 105% of the new request's estimated fee.
- 2) The records from the prior request must still be in the public body's possession.
- 3) 90 days have passed since the public body informed the requestor that the records were available.

I. INDIGENT PARTIES

- A public body must furnish a public record without charge for the first **\$20.00** of the proposed fee if the individual provides adequate proof of their status. This waiver may be used by an individual twice during the same calendar year from the same public body.
- A nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:
 - 1) Is made directly on behalf of the organization or its clients.
 - 2) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.

- 3) Is accompanied by documentation of its designation by the state, if requested by the public body.

J. REQUESTER'S RIGHTS AND APPEALS

- **Appeal Options for Non-Disclosure:** A requesting party may:
 - 1) forward a written appeal to the head of the public body that specifically states why reversal is proper; or
 - 2) seek judicial review of the denial in the circuit court. The requesting party has 180 days from the final determination to deny the request.
- Within 10 business days after receiving a written appeal, the head of the public body shall do one of the following:
 - 1) Reverse the disclosure denial.
 - 2) Issue a written notice to the requesting party upholding the disclosure denial.
 - 3) Reverse the disclosure denial in part and issue a written notice to the requesting party upholding the disclosure denial in part.
 - 4) Under unusual circumstances, issue a notice extending the appeal period for not more than 10 business days. The head of the public body may not issue more than one notice of extension for a particular written appeal.
- **Venue and Standard for Review in the Circuit Court:**
 - 1) The proper venue for a non-disclosure case is the county in which the public record or an office of the public body is located.
 - 2) The court shall make its own determination and the burden is on the public body to prove its denial was valid under the Act.

- **Appeal Options for Fees Charged:**

If the public body has an appeal procedure in its required procedures and guidelines: the requesting party shall submit to the head of the public body a written appeal for a fee reduction that states the word "appeal" and identifies how the fee exceeds the written procedure and guidelines or the Act. Within 10 business days, the head of the public body shall do one of the following:

- (a) Waive the fee.
- (b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and the FOIA act.
- (c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and FOIA.
- (d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

If the appeal is denied, the head of the public body does not respond in a timely fashion, or the public body does not provide for appeals: the requesting party may file a case seeking a fee reduction. The case must be filed within forty-five (45) days after receiving notice of the required fee or a determination of an appeal by the head of the public body. If a case is filed under this section, a public body **is not** required to complete the processing of the FOIA request until the court has resolved the fee dispute.

Practice note: It is in the public body's best interest to create an appeal process to possibly avoid FOIA litigation.

K. PENALTIES

1) A public body will have to reduce its fees by 5% of the original fee for each day it failed to make the requested records available for inspection. The reduction is limited to a maximum reduction of 50% of the total fee.

2) If a requesting party prevails in a **non-disclosure case**, the court **shall** award reasonable attorney fees, costs and disbursements to the requesting party. If the court determines that the public body arbitrarily and capriciously violated FOIA, the court **shall** order the public body to pay a civil fine of \$1,000 to the state treasury and to the requesting party. This is in addition to the award of attorney fees. The fine is to be assessed against the public body, not an individual.

3) In a **fee dispute case**, if a requesting party a reduction of 50% or more, the court **may**, in its discretion, award all or an appropriate portion of reasonable attorney fees, costs and disbursements. If the court determines that the public body arbitrarily and capriciously violated FOIA by charging an excessive fee, the court **shall** order the public body to pay a civil fee of \$500 to the state treasury. The court **may** also award \$500 to the party receiving the fee reduction.

4) If a court determines a public body willfully and intentionally failed to comply with FOIA or otherwise acted in bad faith, the court **shall** order the public body to pay a civil fine of not less than \$2,500 or more than \$7,500 for each occurrence. The court shall consider the public body's budget and whether or not the public body has received penalties in the past.

L. SAMPLE CORRESPONDENCE LANGUAGE

- Sample correspondence is attached in Exhibit B, Forms 1-6 for the various situations a FOIA Coordinator may face.
- A Response Letter Checklist is also attached in Exhibit C.

III. RECORDS EXEMPT FROM DISCLOSURE

Essentially, a public body must use the exemption in its first response or lose its protection in a subsequent challenge regarding a FOIA decision. FOIA allows a public body to show "good cause" why it did not use an exemption. Only time will tell what constitutes "good cause," but it's probable it will be a difficult showing for a public body to prove.

The exceptions, in order of the Act:

- **PRIVACY, MCL 15. 243 (a):** Information of personal nature which is clearly an unwarranted invasion of an individual's privacy.
- **LAW ENFORCEMENT, MCL 15. 243 (b):** Investigative records compiled for law enforcement purposes. However, the protection only exists to the extent disclosure would:
 - i) Interfere with law enforcement proceedings;
 - ii) Deprive a person's right to a fair trial;
 - iii) Constitute an unwarranted invasion of a person's privacy;
 - iv) Disclose a confidential source;
 - v) Endanger the life or safety of law enforcement personnel; or
 - vi) Disclose law enforcement techniques or procedures.
- **JAIL SECURITY, MCL 15.243 (c):** Records that would compromise a public body's ability to maintain the security of a penal/custodial institution.
- **OTHER STATUTORY EXEMPTIONS, MCL 15.243 (d):** Records exempt under other statutes. **The other exception(s) must be listed.**
- **COMPILATION EXCEPTION, MCL 15.243 (e):** A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

- **TRADE SECRETS, MCL 15.243 (f)**: Trade secrets and/or financial information voluntarily submitted to the public body pursuant to a promise such information is to remain confidential.
- **STATUTORY PRIVILEGES, MCL 15.243 (g)**: Records subject to the attorney-client privilege and/or other statutory privileges.
- **ADDITIONAL PRIVILEGED MATERIAL, MCL 15.243 (h)**: Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- **BID PROPOSALS, MCL 15.243 (i)**: Pending bid proposals, until time for public opening of bids. If a public opening is not conducted, bid is exempt from disclosure until the deadline for submission of bids or proposals expires.
- **REAL PROPERTY APPRAISALS, MCL 15.243 (j)**: Appraisals of real property until:
 - i) The time an agreement is entered into; or
 - ii) Three (3) years since making appraisal, unless litigation regarding property has not ended.
- **TEST QUESTIONS, MCL 15.243 (k)**: Test questions/answers, scoring keys, and/or other examination material utilized for public employment, licenses or academics.
- **MEDICAL RECORDS, MCL 15.243 (l)**: Records containing an individual's medical, counseling, or psychological information.
- **ADVISORY COMMUNICATIONS BETWEEN PUBLIC BODIES, MCL 15.243(m)**: Communications and notes within a public body or between public bodies of an advisory nature to the extent such records cover information other than purely factual matters.

Burden: The public entity *must* show the public interest in encouraging "frank communication" between officials clearly outweighs the public interest in disclosure.
- **LAW ENFORCEMENT COMMUNICATION CODES, MCL 15.243(n)**: Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed, would prejudice a public body's ability

to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

- **ARCHAEOLOGICAL SITES, MCL 15.243 (o):** Records indicating the exact location of archaeological sites.
- **TESTING FOR BIDDING PARTIES, MCL 15.243 (p):** Testing data regarding whether a bidder meets a public body's specifications. Exemption only exists for one (1) year after public body completes testing.
- **ACADEMIC TRANSCRIPTS OF FINANCIALLY DELINQUENT STUDENTS, MCL 15.243 (q):** Academic transcripts of an institution of higher learning of a student who is delinquent in payment of obligations to the institution.
- **CAMPAIGN COMMITTEE INFORMATION, MCL 15.243 (r):** Records of a campaign committee, including a committee that receives money from a state campaign fund.
- **LAW ENFORCEMENT, MCL 15.243 (s):** Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular interest, public records of law enforcement agency, the release of which would do any of the following:
 - i) Identify an informant, undercover officer, and/or plain clothes officer;
 - ii) Disclose the address of an active/retired law enforcement officer and/or their family;
 - iii) Disclose an agency's operational instructions for its officers;
 - iv) Disclose the contents of staff manuals; and
 - v) Endanger the life/safety of an active/retired law enforcement officer and/or his family.
- **PUBLIC HEALTH INVESTIGATIONS, MCL 15.243(t):** Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to one or more of the following:

- i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received; or
 - ii) The fact that an allegation was received by the department, the fact that the department did not issue a complaint for the allegations and the fact that the allegation was dismissed.
- **SECURITY MEASURES, MCL 15.243(u)**: Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.
- **PENDING LITIGATION, MCL 15.243 (v)**: Records pertaining to a pending civil action in which the requesting person is a party.
- **SOCIAL SECURITY NUMBERS, MCL 15.243 (w)**: Information or records that would disclose the social security number of an individual.
- **PRESIDENTIAL SEARCH BY INSTITUTION OF HIGHER LEARNING, MCL 15.243 (x)**: Certain records involved with the selection of a president of an institution of higher learning with specific limitations after candidates are named as finalists for the position.
- **PUBLIC SAFETY INFORMATION, MCL 15.243 (y)**: Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to: building; public works; and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body; capabilities and plans for responding to a violation of the Michigan anti-terrorism act; and emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

IV. LEGAL PRECEDENT

A. General Standards

- **Overall Standard**: Courts determine whether the public interest in disclosure outweighs the public interest in non-disclosure.

- Exempt Records: Courts "narrowly interpret" FOIA's exemptions. A public entity must prove non-disclosure within the intent of state legislature. *City of Warren v. City of Detroit*, 261 Mich. App. 165, 680 N.W.2d 57 (2004).
- Judicial Focus: Analysis focuses on content of records, not necessarily the means by which the information is sent/held.
- Public Interest: Courts will focus on whether the public has a "significant interest" in the information sought.

For example, a court will be more likely to order disclosure regarding a police department's internal investigation of an excessive force claim, than an internal investigation regarding purely workplace concerns. *Federated Publications v. City of Lansing*, 2002 WL 31474824 (Mich. App).

B. Municipal Issues

- "Frank Communication" Exception (FCE): Generally, Courts have interpreted this exception even more narrowly than other FOIA exemptions. Public entity must show why frank communication between public bodies, in the particular instance, clearly outweighs the public's right to know.

The public entity must show non-disclosure would benefit the overall public welfare more than public knowledge of the information sought. *Herald Company, Inc. v. Eastern Michigan University Board of Regents*, 2005 WL 323751 (Mich. App).

FCE applies to communications that were preliminary to a final agency determination, e.g., termination, even if communications were not preliminary at time of a FOIA request. *Bukowski v. City of Detroit*, 478 Mich. 268 (2007).

- Passage of Time: The specific time at which a public body asserts a FOIA exemption is the appropriate time to determine whether a record is exempt from disclosure. The passage of time has no bearing on whether entity properly denied FOIA request. *State News v. Michigan State University*, 481 Mich. 692 (2008).
- Employee Information: The home addresses and telephone numbers of University of Michigan employees were exempt from disclosure under FOIA. *Michigan Federation of Teachers et al v. University of Michigan*, 481 Mich. 657 (2008).

- Settlement Agreements: FOIA does not exempt disclosure of settlement agreements. Agreements are considered public records, **No Secret Deals**. *Detroit Free Press, Inc. v. City of Detroit*, 480 Mich. 1079 (2008).
- Attorney Fees: The requesting party **always** receives fees if the Court finds it is entitled to information at issue. "Reasonableness" and/or "good faith" defenses will not preclude payment of attorney fees.

Also, a governmental entity may be liable for fees incurred after a party's receipt of information, e.g., appeal. *Adamski v. Addison Township*, 2005 WL 1123911.

Exception: A partial victory only means partial fees as to that information.

C. Law Enforcement Issues

- Pension Benefits: The names and amount of pension benefits for retired police and fire personnel are not exempt. This information does not constitute an unwarranted invasion of privacy.

However, an individual's address and/or personnel files remain exempt. *DFP v. City of Southfield*, 269 Mich. App. 275 (2005).

- Traffic Accident Reports: Previously, municipalities freely provided accident reports to those who asked. Citing privacy concerns, it recently limited disclosure to interested parties, e.g., drivers, attorneys, insurance companies. The Court found reports were exempt. "The identification of potentially injured individuals is an unwarranted invasion of privacy." *Michigan Rehab v. City of Detroit*, 2006 WL 51367.
- *State News v. Michigan State University*, 274 Mich. App. 558, (2007), 481 Mich. 692 (2008)(rev'd on other grounds). The Court made it explicitly clear a law enforcement agency must provide "**particularized**" reason indicating how a document interferes with law enforcement proceedings. Agency cannot simply cite statutory language.
- Police Department Internal Investigations: Internal investigations generally can fall within the scope of the law enforcement "personnel records" exemption. *Newark Morning Ledger Company v. Saginaw County Sheriff*, 204 Mich. App. 215 (1994).

However: A court must make determination whether the public interest in disclosure outweighs the public interest in non-disclosure. *Kent Co. Deputy Sheriffs Ass'n v. Kent Co. Sheriff*, 463 Mich. 353 (2000).

Generally: A law enforcement official must submit a **detailed affidavit** justifying the non-disclosure of a law enforcement agency's Internal Investigation to prevent disclosure. Language from a Court approved affidavit is attached in the Appendix as Exhibit A.

- Confidential Informants: FOIA exempts disclosure of any information regarding CI, even if the requester only seeks CI statements, not the individual's actual name. Again, "complete particularized justification" is required. *Hyson v. Department of Correction*, 205 Mich. App. 422 (1994).
- Employment Applications: FOIA exempts disclosure of employment applications, even if the requester only seeks applications of unsuccessful law enforcement applicants. *Landry v. City of Dearborn*, 259 Mich. App. 416 (2004).
- Booking Photographs: Disclosure of photographs of a person arrested, charged with a felony, and awaiting trial do not constitute a clearly unwarranted invasion of an individual's privacy. *Detroit Free Press, Inc. v. Oakland County Sheriff*, 164 Mich. App. 656 (1988). However, booking photos should not be released until after a person is arraigned in court.